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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

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11 UNITED STATES OF AMERICA,) CR 99-01274-RSWL -19
12)
13 Plaintiff,)
14) ORDER re: NINTH CIRCUIT
15 v.) REMAND re DEFENDANT'S
16) MOTION TO REDUCE
17 HECTOR RODRIGUEZ-RAMIREZ,) SENTENCE PURSUANT TO 18
18) U.S.C. § 3582(c)(2)
19) [1777]
20 Defendant.)
21)
22

23 **I. INTRODUCTION**

24 Defendant Hector Rodriguez-Ramirez ("Defendant") is
25 currently serving a 235-month prison sentence for
26 multiple violations under the Racketeer Influenced and
27 Corrupt Organizations Act ("RICO") involving drug
28 trafficking to include racketeering, RICO conspiracy,
trafficking to include racketeering, RICO conspiracy,
violent crimes in aid of racketeering ("VICAR"),
conspiracy to commit murder, and money laundering in
connection with the Columbia Lil' Cycos Gang ("CLCS").
On August 14, 2015, Defendant moved for a reduction in
his sentence under 18 U.S.C. § 3582(c)(2) [1777]
("Motion") from 235 months to 205 months, arguing that

1 Amendment 782 to United States Sentencing Guidelines
2 ("U.S.S.G.") § 2D1.1 lowered the base offense level he
3 was sentenced under. See Def.'s Mot. to Reduce
4 Sentence ("Mot."), ECF No. 1777. After this Court
5 denied the Motion, the Ninth Circuit vacated and
6 remanded this Court's Order because the sentencing
7 guidelines were incorrectly calculated. For the
8 reasons set forth below, the Court once again **DENIES**
9 Defendant's Motion [1777].

II. BACKGROUND

A. Factual Background

12 On July 13, 2000, a grand jury in the Central
13 District of California returned a twenty-six count
14 First Superseding Indictment ("FSI") charging twenty-
15 six defendants, all members and associates of a subset
16 of a criminal street gang known as the 18th Street
17 Gang, with RICO, RICO conspiracy, VICAR, use of
18 firearms during crimes of violence, narcotics
19 trafficking, and money laundering. See First
20 Superseding Indictment ("FSI"), ECF No. 109. The FSI
21 charged, in part, that the 18th Street Gang, together
22 with the Mexican Mafia, was a racketeering enterprise
23 engaged in narcotics trafficking and money laundering
24 in Los Angeles and engaged in the use of violence and
25 murder to protect and expand its powers. Id.

Defendant was charged in Counts One, Two, Three, Thirteen and Seventeen of the FSI, which alleged the following violations: a substantive RICO violation

1 pursuant to 18 U.S.C. § 1962(c) (count one); RICO
2 conspiracy in violation of 18 U.S.C. § 1962(d) (count
3 two); conspiracy to distribute narcotics in violation
4 of 21 U.S.C. § 841(a)(1) (count three); VICAR
5 conspiracy to commit murder in violation of 18 U.S.C. §
6 1959(a) (count thirteen); and conspiracy to launder
7 money in violation of 18 U.S.C. § 1956(h) (count
8 seventeen). Id. On February 28, 2002, Defendant pled
9 guilty, pursuant to a written plea agreement, to all
10 counts against him [628].

11 On April 15, 2002, Defendant's Pre-Sentence Report
12 ("PSR") was issued. See Presentencing Report ("PSR"),
13 ECF No. 1713. The PSR found Defendant had a total
14 offense level of 35, based on a base offense level of
15 38 with three points subtracted for acceptance and
16 responsibility. Id. The PSR calculated a total of
17 eight criminal history points and a criminal history
18 category of IV based on Defendant's 1989 felony
19 conviction for voluntary manslaughter (3 points), his
20 1998 felony conviction for being an illegal alien found
21 in the United States (2 points), and his status on
22 supervised release for his 1998 felony (3 points). Id.
23 With an offense level of 35, combined with a criminal
24 history category of IV, the PSR calculated a sentencing
25 range of 235-293 months in custody. Id.

26 On May 16, 2003, this Court sentenced Defendant to
27 235 months' imprisonment, to be followed by a five-year
28 period of supervised release [1023]. Defendant's

1 sentence was upheld on appeal [1471].

2 **B. Procedural Background**

3 On June 10, 2013, Defendant moved for a reduction
4 of his sentence under 18 U.S.C. § 3582(c) [1713]. The
5 Court denied Defendant's motion. See Order re: Def.'s
6 Mot. to Reduce Sentence, ECF No. 1721. Defendant filed
7 his second successive motion on June 16, 2014, re-
8 alleging the same grounds and additionally arguing
9 remorsefulness and a change in his personal priorities
10 [1734]. On September 16, 2014, the Court denied
11 Defendant's second motion. See Second Order re: Def.'s
12 Mot. to Reduce Sentence, ECF No. 1762. Defendant filed
13 his third successive motion on August 14, 2015,
14 alleging Amendment 782 to the Sentencing Guidelines
15 called for a reduction in his sentencing range [1777].
16 On April 4, 2016, the Court denied Defendant's third
17 motion. See Third Order re: Def.'s Mot. to Reduce
18 Sentence, ECF No. 1798.

19 On May 8, 2017, the Ninth Circuit granted
20 Defendant's unopposed motion for summary vacatur and
21 remand because Defendant's post-Amendment 782 guideline
22 range was incorrectly calculated [1820]. This Court's
23 April 4, 2016 order was vacated and the matter was
24 remanded to this Court for further proceedings.

25 **III. DISCUSSION**

26 **A. Legal Standard**

27 On November 1, 2014, the Sentencing Commission
28 amended its Sentencing Guidelines with Amendment 782,

1 which reduced the base offense levels for cocaine,
2 cocaine base, and heroin offenses under U.S.S.G. §
3 2D1.1 by two levels. Amendment 782 was added to the
4 list of amendments to be applied retroactively under
5 U.S.S.G. § 1B1.10(c).

6 18 U.S.C. § 3582(c)(2) states, in relevant part,
7 that:

8 [I]n the case of a defendant who has been
9 sentenced to a term of imprisonment based
10 on a sentencing range that has subsequently
11 been lowered by the Sentencing Commission
12 . . . upon motion of the defendant . . .
13 the court may reduce the term of
14 imprisonment, after considering the factors
15 set forth in [18 U.S.C.] section 3553(a) to
16 the extent that they are applicable, if
17 such a reduction is consistent with
18 applicable policy statements issued by
19 the Sentencing Commission. 18 U.S.C. §
20 3582(c)(2).

21 The applicable policy statement for authorized
22 sentence reductions under § 3582(c)(2) is under
23 U.S.S.G. § 1B1.10(a), which reads, in relevant part:

24 (2) Exclusions. -- A reduction in the
25 defendant's term of imprisonment is
26 not consistent with this policy
27 statement and therefore is not
28 authorized under 18 U.S.C. § 3582(c)(2)

1 if --
2 (B) an amendment . . . does not have
3 the effect of lowering the defendant's
4 applicable guideline range. U.S.S.G. §
5 1B1.10(a).

6 Therefore, Amendment 782 must reduce Defendant's
7 applicable guideline range in order for a § 3582(c)(2)
8 sentence reduction to be authorized under §
9 1B1.10(a)(2)(B). Additionally, as stated above,
10 sentence reductions under § 3582(c)(2) are to be made
11 after consideration of 18 U.S.C. § 3553(a), which
12 provides factors to consider when imposing a sentence.¹

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14 ¹ Section 3553(a) reads, in part, as follows:
15 "The court shall impose a sentence sufficient, but not
16 greater than necessary, to comply with the purposes set
17 forth in paragraph (2) of this subsection. The court, in
18 determining the particular sentence to be imposed, shall
19 consider -

20 (1) the nature and circumstances of the offense and
21 the history and characteristics of the defendant;
22 (2) the need for the sentence imposed --
23 (A) to reflect the seriousness of the offense, to
24 promote respect for the law, and to provide just
25 punishment for the offense;
26 (B) to afford adequate deterrence to criminal
27 conduct;
28 (C) to protect the public from further crimes of
 the defendant; and
 (D) to provide the defendant with needed
 educational or vocational training, medical care,
 or other correctional treatment in the most
 effective manner;
 (3) the kinds of sentences available;
 (4) the kinds of sentence and the sentencing range
 established for --
 (A) the applicable category of offense committed
 by the applicable category of defendant as set
 forth in the guidelines [. . .] (i) issued by the

B. Analysis

Based on the Ninth Circuit's opinion, and the parties' positions, the Court finds that Defendant is eligible for a sentence reduction under 18 U.S.C. § 3582(c). Defendant's corrected sentencing guidelines range is 151-188 months. However, the Court finds that its previous analysis of the Section 3553(a) factors still apply and the factors weigh against reducing Defendant's sentence.

1. Defendant's Corrected Amended Sentencing Guidelines Range

The Court finds that Defendant is eligible for a sentence reduction under 18 U.S.C. § 3582(c). Defendant's Narcotics Conspiracy/Money Laundering offense now carries an offense level of 32 after Amendment 782 is applied. USSG § 2E1.1(a)(1); USSG § 2S1.1(a)(4)(2014); USSG § 2D1.1(c)(a). With a +2 adjustment for multiple counts, USSG § 3D1.4, and a -3 adjustment for acceptance of responsibility, USSG § 3E1.1, Defendant's new offense level is 31. With a criminal history category of IV, Defendant's amended sentencing guidelines range is 151-188 months.

2. 18 U.S.C. § 3553(a) Sentencing Factors

While Defendant is entitled to a reduction in his sentencing guidelines range based on Amendment 782, the Court once again finds that his sentence should not be

1 reduced pursuant to 18 U.S.C. § 3582(c) because none of
2 the factors listed in 18 U.S.C. § 3553(a) support such
3 a basis to reduce Defendant's sentence.

4 In his position papers, Defendant offers no new
5 reasons as to why his sentence should be reduced from
6 the bases laid out in his Motion to Reduce Sentence and
7 Reply filed August 14, 2015 and February 19, 2016
8 [1777, 1792]. Similar to Defendant's Reply, his
9 position papers after the Ninth Circuit's remand state
10 his sentence should be reduced because: (1) he played a
11 minor role in the underlying offenses; (2) his co-
12 defendants who committed nearly identical or worse
13 crimes received lower sentences; and (3) he has
14 rehabilitated himself while incarcerated. See Def.'s
15 Position Papers ("Def.'s Pos.") 2:10-28, ECF No. 1828.

16 Consequently, the Court incorporates its previous
17 Order denying Defendant's Motion to Reduce Sentence and
18 again **DENIES** Defendant's Motion for the same reasons.

19 Regarding the first Section 3553(a) factor, in
20 considering the nature and circumstances of the offense
21 and the history and characteristics of Defendant, this
22 Court has noted in prior orders denying Defendant's
23 previous motions to reduce his sentence [1721, 1762],
24 and finds consistently as to the present Motion, that
25 the facts weigh against granting sentence reduction.
26 Defendant was an integral member of a violent criminal
27 enterprise engaged in acts of violence, including
28 murder and attempted murder, narcotics trafficking, and

1 money laundering. PSR ¶¶ 47-49, 54, 69, ECF No. 1713.
2 Defendant was an essential member of this criminal
3 enterprise and was a part of a conspiracy to murder a
4 fellow gang member. Id. Additionally, Defendant has a
5 history of felony convictions, including voluntary
6 manslaughter in which he shot a man four times during
7 an altercation. Id.

8 In his Motion, Defendant generally argues that his
9 offenses were committed over fourteen years ago, "and
10 this is a mitigating factor derived from the fact that
11 the signature qualities of youth are transient." Mot.
12 4. In his Reply and Position Papers, Defendant further
13 contends that he was a "low-level" player in the CLCS
14 and "once having become a member, [Defendant] had
15 little choice in what offenses he would commit."
16 Def.'s Reply 3:23-27, ECF No. 1792; Def.'s Pos. 2:10-
17 14. This Court finds these factors are not persuasive
18 and do not change the nature and circumstances of
19 Defendant's crimes, nor do they change Defendant's
20 history of criminal behavior.

21 Regarding the second factor, the need for the
22 sentence imposed, the Court finds this factor also
23 weighs against a sentence reduction. Punishment is a
24 means for deterrence. Defendant argues: "[t]his
25 Court's original sentence has achieved this goal, in
26 that it has successfully deterred [Defendant] from
27 committing future crimes, and a reduction in his
28 sentence to 200 months will continue to achieve this

1 goal." Mot. 5. Defendant further argues that, as to
2 the consideration of deterrence, "[t]here is nothing in
3 the record, nor can the government produce any evidence
4 that [Defendant] contemplates partaking in any criminal
5 conduct upon completion of his sentence." Id. This
6 argument is not persuasive. Defendant has a lengthy
7 criminal history and has shown a blatant disregard for
8 the law and the lives of others. Moreover, while
9 Defendant argues he has demonstrated significant
10 rehabilitation while in prison, he readily admits he
11 has had several infractions while incarcerated. Def.'s
12 Pos. 2:22-24, 8:17-18.

13 The fourth factor, the kinds of sentences and the
14 sentencing range established for the offense committed,
15 also weighs against reducing Defendant's sentence. As
16 discussed above, Defendant is eligible for a new
17 sentencing range of 151-188 months. However, his
18 original sentence is warranted given this Court's
19 analysis of the Section 3553(a) factors. Defendant has
20 a notable criminal history and, as to the present
21 matter was convicted on multiple counts, including
22 narcotics trafficking, money laundering, and conspiracy
23 to commit murder. Given the nature and circumstances
24 of these convictions, including Defendant's role in
25 conspiring to lure a fellow gang member to his death,
26 there is cause to apply the current sentence. The
27 current sentence is not a substantial departure from
28 the amended guidelines.

1 Finally, the Court finds that maintaining the
2 original sentence would not create unwarranted
3 sentencing disparities. Defendant argues "several of
4 [his] codefendants received lighter sentences for
5 identical conduct or equally harsh sentences for far
6 more severe conduct." Id. at 6:19-21. In so arguing,
7 Defendant seeks to re-litigate this Court's prior
8 holding and sentencing in this matter. For all the
9 reasons discussed above, this Court finds there is no
10 cause to grant Defendant's Motion.

11 **IV. CONCLUSION**

12 While Defendant's sentencing guidelines range is
13 reduced to 151-188 months, the Section 3553(a) factors
14 weigh against reducing Defendant's sentence.
15 Therefore, Defendant's Motion to Reduce his Sentence is
16 **DENIED.**

17 **IT IS SO ORDERED.**

18 DATED: August 11, 2017

s/ RONALD S.W. LEW

19 **HONORABLE RONALD S.W. LEW**
20 Senior U.S. District Judge

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